

SENATE BILL 2335

By Kyle

AN ACT to amend Tennessee Code Annotated, Title 4, Chapters 31 and 51; Title 8, Chapter 4; Title 9, Chapter 4 and Title 49, relative to lottery funded capital outlay projects for K-12 educational facility pursuant to Article XI, Section 5 of the Constitution of Tennessee. This act makes appropriations for capital outlay projects for K-12 educational facilities for an indefinite period of time.

WHEREAS, the voters of the State of Tennessee authorized the Legislature to establish a state lottery for the purpose of providing financial assistance to citizens of Tennessee to attend post-secondary education institutions located within Tennessee; and

WHEREAS, the voters of the State of Tennessee authorized the Legislature in Article XI, Section 5 of the Constitution of Tennessee to use excess net lottery proceeds for capital outlay projects for K-12 educational facilities; and

WHEREAS, the use of such excess net proceeds must be used to support improvements and enhancements for educational programs and purposes, and

WHEREAS, the use of such excess net proceeds to provide assistance to Tennessee counties and municipalities which operate local education agencies is declared to be in furtherance of a public purpose; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Part 10 of Title 4, Chapter 31 of the Tennessee Code Annotated is amended by deleting the existing part and substituting instead the following:

§ 4-31-1001.

This part shall be known and may be cited as the "Tennessee Schoolhouse Trust Fund Act of 2007."

§ 4-31-1002.

(a) The general assembly finds and declares that:

(1) Financing costs incurred by local governments in connection with education projects are a significant factor in the ability of the local governments to meet the kindergarten through grade twelve (K-12) educational needs of their communities; and

(2) To the extent that financing of education projects can be accomplished less expensively through the pooling of needs and the use of less costly borrowing techniques, local governments would be better able to provide education projects, and other essential services for the benefit of its citizens and taxpayers.

(b)

(1) It is accordingly in furtherance of the interests and welfare of all Tennesseans that the Tennessee local development authority shall be empowered and is authorized to assist local government units with financing capital projects for kindergarten through grade twelve (K-12) educational purposes.

(2) It is intended that the Tennessee local development authority be vested with all powers necessary to accomplish these purposes.

§ 4-31-1003.

As used in connection with lottery education project programs under this chapter, unless the context otherwise requires:

(1) "Authority" means the Tennessee local development authority;

(2) "Construction" means the building, reconstruction, creation, replacement, extension, repairing, betterment, improvement, alteration, equipment, extension, or acquisition, including, but not limited to, the

acquisition of land and of rights in land, the engineering, architectural designs, plans, working drawings, specifications, procedures, and other action necessary in the construction of such capital projects, and the inspection and supervision of such capital projects;

(3) "Education debt" means competitively sold, fixed rate debt issued, together with any competitively sold, fixed rated debt issued to renew or refund the debt, by any local government unit or the authority to finance the construction of education projects subject to an agreement entered into pursuant to this act;

(4) "Education project" means a capital outlay project for kindergarten through grade twelve (K-12) educational facilities; and

(5) "Local education agency" or "LEA" has the same meaning as defined in § 49-3-302.

§ 4-31-1004.

There is hereby created the Tennessee Local Development Authority Tennessee Schoolhouse Trust Fund Account (the "lottery capital outlay account"), into which transfers pursuant to § 4-51-111 shall be deposited as well as any other funds made available. All interest and earnings of the account shall be credited to such account, shall not revert to the general fund or to the lottery for education account; and shall be carried forward into the subsequent fiscal year. Funds within the lottery capital outlay account shall be used for educational facilities programs under this chapter (including payment of expenses of establishment and administration of such programs) and shall not be deemed available for any other purpose (including creditors of the authority) except as consistent with Article XI, Section 5, Constitution of Tennessee. The authority shall report annually to the general assembly regarding program activity and

utilization of the fund and make recommendations as to any additional funding amounts deemed necessary to accomplish the educational facilities programs established by this chapter.

SECTION 2. Section 4-31-1101 of the Tennessee Code Annotated is amended by deleting the existing subsections (a) and (b) and renumbering the remaining subsections.

SECTION 3. Section 4-31-1102(2) of the Tennessee Code Annotated is amended by deleting the existing language and substituting instead "The coverage requirement;".

SECTION 4. Tennessee Code Annotated, Section 4-31-1103 is amended by deleting existing subsections (a) through (c) in their entirety and substituting instead the following language as new subsections (a) and (b):

(a) Each local government unit issuing education debt and applying for credit enhancement pursuant to this part is authorized to pledge its full faith and credit to the authority.

(b) Prior to approval of an application for credit enhancement, the authority shall have identified sufficient funds within the lottery capital outlay account.

and by redesignating existing subsection (d) accordingly.

SECTION 5. Tennessee Code Annotated, Title 4, Chapter 31 is amended by adding the following as a new appropriately designated Part:

§ 4-31-__01:

This part shall be known as the Tennessee lottery education project loan program.

§ 4-31-_02.

(a) In addition to the powers otherwise granted by law, the authority has

the power and is authorized to issue its revenue bonds and to make the proceeds available for loans to any local government unit to finance the construction of education projects pursuant to a loan agreement between the local government unit and the authority. Such loans shall be made from the proceeds of bonds or notes issued by the authority pursuant to this chapter for the purpose of making such loans; provided, however, that the bonds and notes of the authority that may be outstanding at any time for such purpose shall not exceed one hundred fifty million dollars (\$150,000,000). Such bonds or notes may be payable from or secured by the general shortfall reserve subaccount created by § 4-51-111 or enhanced as provided by part 11 of this chapter, all as the authority may provide in the indentures or resolutions authorizing and securing the authority's bonds and notes.

(b) Only local government units funding the local share of the basic education program for a local education agency shall be eligible to participate in the loan program.

§ 4-31-__03.

(a) Subject to any existing contractual obligations of the local government unit and the local education agency, the authority may enter into loan agreements with any local government unit and any local government unit may enter into loan agreements with the authority for loans for education projects.

(b) Any loan agreement may include such provisions as may be agreed upon by the authority and the local government and shall additionally include, among other things, in substance, the following:

(1) The amount of the loan, not to exceed the estimated reasonable cost of the project to be constructed, the financing costs of the

authority, the administrative costs of the authority, and the amount of any required reserves as determined by the authority;

(2) An agreement by the authority to pay part of the amount of the loan to the local government unit during the progress of the construction, or to pay the amount of the loan following completion of the construction, as may be agreed upon by the parties; and

(3) An agreement by the local government unit:

(A) To proceed expeditiously with and complete construction of the project in accordance with the plans approved pursuant to this part;

(B) To commence operation of the project on its completion, and not to discontinue operations, change the use of, or dispose of the project without the approval of the authority;

(C) To operate and maintain the project in accordance with applicable provisions of this part and in compliance with rules and regulations of the authority;

(D) Not to contract with any for-profit-corporation, private person or firm for the operation or beneficial use of the for-profit-corporation, private person, or firm, notwithstanding the provisions of any law authorizing such contracts, except upon approval by the authority of an application to the authority, which application shall include, but not be limited to, an opinion from a nationally recognized bond counsel that the contract will not affect the tax exempt status of the income of the authority's bonds or notes financing such facility under state or federal law;

(E) To pledge such sources of revenue including, but not limited

to, the full faith and credit to pay the principal of and interest on the loan and to make such payments as and when due in accordance with the loan agreement; and

(F) To establish and maintain adequate financial records for the project, and to cause to be made an annual audit of the financial records and transactions covering each fiscal year in accordance with generally accepted government auditing standards, and to furnish a copy of such audit and, upon request, such financial records to the comptroller of the treasury.

(c) The authority has the right to enter into such further agreements with a local government unit and require such further security as it may see fit prior to, or simultaneously with, the issuance of bonds or notes or to refuse to issue bonds or notes until such agreements or security, in any form that the authority may elect, are agreed to or are obtained.

(d) Failure of a local government unit to file the audit or, upon request, the financial information with the comptroller of the treasury as required by the loan agreement each year until the loan, together with interest, is totally repaid constitutes a Class A misdemeanor and anyone violating this subsection (d), upon conviction, shall be liable for a fine of not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100) for each violation, within the discretion of the court, and each day of continued violation constitutes a separate offense.

(e) The department, in conjunction with the authority, shall develop an application and review procedure for loans under this program and shall make recommendations to the authority as to loan applications.

(f) The authority and the department shall have such other authority as

may be necessary or appropriate for the exercise of the powers and duties conferred by this part.

§ 4-31-_04.

(a) Whenever, and as often as, a local government unit enters into a loan agreement with the authority under the provisions of this part, the governing body of such local government unit shall provide by resolution for the levy and collection of a tax upon all taxable property within the local government unit sufficient to pay when due all amounts payable under the loan agreement as and when such amounts become due and payable, including all fees and charges due the authority under such loan agreement and, furthermore, to pledge such tax and the full faith and credit of such local government unit to such payments; provided, however, that a special school district shall provide for the collection of such a tax upon the levy of the tax by the general assembly or shall pledge sufficient amounts from previously authorized taxes to cover all amounts due.

(b) The tax provided for in subsection (a) shall be assessed, levied, collected, and paid in like manner as other taxes of the local government unit, except as provided in subsection (a).

(c) The tax provided for in subsection (a) shall not be included within any statutory or other limitation of rate or amount for such local government, but shall be excluded therefrom and be in addition thereto and in excess thereof, notwithstanding and without regard to the prohibitions, restrictions, or requirements of any other law, whether public or private.

(d) There shall be set aside from the tax levy into a special fund an amount sufficient for the payment of the annual amount due under any such loan agreement and such additional amounts as may be required by the loan

agreement for reserves. The money in such funds shall be used exclusively for such purposes and shall not be used for any other purpose until such annual amount has been paid in full or such reserve requirement has been fully satisfied.

§ 4-31-_05.

(a) In the event any local government unit having entered into a loan agreement shall fail to remit funds in accordance with a loan agreement, the authority shall notify the commissioner of education and the commissioner of finance and administration.

(b) In the event the local government unit shall fail to remit the amount set forth in a notice of default within thirty (30) days of the receipt of the notice, the authority shall, without further authorization, file suit against the local government unit.

(c) In the event there are not sufficient funds in the lottery capital outlay account to cure the deficiency in repayments to the authority, the commissioner of finance and administration shall transfer to the authority funds equal to the amount of the remaining payment deficiency from the general shortfall reserve subaccount of the lottery for education account as established by § 4-51-111.

§ 4-31-_06.

The authority has the right, in addition to all other rights, by mandamus or other suit, action, or proceeding in any court of competent jurisdiction, to require the local government unit, the governing body, and any proper officer, agent, or employee of the local government unit to carry out any agreements and to perform its and their duties under this part or under any rule or regulation of the authority adopted pursuant to this part.

§ 4-31-_07.

Local government units may enter into loan agreements under the provisions of this part notwithstanding and without regard to any limit on indebtedness provided by law.

§ 4-31-_08.

All action required or authorized to be taken under this part by the governing body of any local government unit may be by resolution, which resolution may be adopted at the meeting of the governing body at which such resolution is introduced, and shall take effect immediately upon its adoption.

§ 4-31-_09.

(a) This part shall be in addition to and supplemental to any other law providing for the financing of education projects by local government units.

(b) Notwithstanding any provisions of law to the contrary, no proceedings by a local government unit or local education agency shall be required for loan agreements hereunder, except as provided by this part.

(c) No requirements or restrictions applicable to borrowing by a local government unit contained in any other law shall be applicable to loans under this part.

§ 4-31-_010.

(a) Any pledge made by the authority pursuant to this chapter, or by a local government unit pursuant to a loan program agreement, or by a local education agency in connection therewith shall be valid and binding from the time when the pledge is made, the moneys or property so pledged and thereafter received by the authority or local government unit, as applicable, shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act. The lien of any such pledge shall be valid and binding as

against all parties having claims of any kind in tort, contract, or otherwise against the authority, local government units, or local education agency as applicable, irrespective of whether such parties have notice of those claims.

(b) Recording of the resolution or any other instrument by which a pledge is created is not required.

SECTION _5. Tennessee Code Annotated, Section 4-51-111 is amended by deleting subsection (b)(4) in its entirety and by substituting instead the following language:

(4) A special reserve subaccount shall be maintained within the lottery for education account. The amount of one percent (1%) of net lottery proceeds deposited into the lottery for education account from all deposits made to the fund shall be deposited in this subaccount, at least quarterly during a fiscal year. The amounts in the special reserve subaccount shall be transferred at least quarterly during a fiscal year to the lottery capital outlay account established in Chapter 31 of this Title, to be used to make or support loans to local government units for educational programs and purposes (including payment of costs of establishment and administration of such programs) in accordance with Article XI, Section 5 of the Constitution of Tennessee and to pay or secure debt issued for such programs and purposes as otherwise provided by law. Such amount shall supplement, not supplant, non-lottery educational resources for such programs and purposes. Notwithstanding any provision of this section to the contrary, treasurer's earnings on the special reserve subaccount shall be credited to the special reserve subaccount to be used in a manner consistent with this subdivision (b)(4). The funds in the lottery capital outlay account shall not be pledged or otherwise available to creditors of the local development authority for any other program.

SECTION 6. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION _7. This act shall take effect on July 1, 2007, the public welfare requiring it.